

Decision 01-05-030 May 3, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The Utility Consumers' Action Network (UCAN),

Complainant,

vs.

MCI Telecommunications Corporation
(U 5011 C),

Defendant.

Case 99-06-034
(Filed June 14, 1999)

O P I N I O N

Summary

This order approves a settlement agreement between all of the parties to this proceeding, namely, The Utility Consumers' Action Network (UCAN), MCI Telecommunications Corporation (MCI), and the Office of Ratepayer Advocates (ORA). The settlement agreement resolves issues regarding MCI's billing of certain calls from California state prisons.

Procedural Background

On June 14, 1999, UCAN filed its complaint alleging, among other things, that MCI did not bill its tariffed rates for California intrastate MCI Maximum Security Collect calls which were placed from MCI pre-subscribed authorized

institutional phones.¹ In response to the complaint, MCI reviewed the allegations, and confirmed and corrected several billing problems.

MCI and UCAN then began negotiations over providing reparations to the overbilled customers. ORA filed a request for intervention on December 30, 1999, and submitted an appearance at the January 13, 2000 prehearing conference.

On March 5, 2000, Melvin Lewis, an inmate at Corcoran State Prison, wrote to the assigned Commissioner and enclosed a copy of a letter he sent to representatives of both UCAN and MCI. In his letter, Lewis stated that he opposed the then-anticipated settlement because he wished to receive direct compensation for the overcharges his family paid. MCI and UCAN separately responded to Lewis informing him that any settlement between UCAN and MCI would have no affect on his family's ability to seek reparations for any overcharges they paid.

The negotiations between MCI and UCAN resulted in the settlement agreement dated April 19, 2000. On May 12, 2000, ORA filed its opposition to the settlement agreement. All three parties subsequently opened settlement negotiations.

On September 7, 2000, MCI, UCAN and ORA filed a joint motion that requested Commission approval of a settlement agreement among the three parties. The redacted version of the settlement agreement is Attachment A to this decision. The parties also filed a motion asking the Commission to exclude the unredacted version of the settlement agreement from the public record. The

¹ UCAN raised but subsequently withdrew issues other than the tariff billing issues.

parties stated that the unredacted version contains commercially sensitive information and analysis relating to MCI's contract with State Department of Corrections.²

Description of the Agreement

Pursuant to the settlement agreement, MCI will make a one-time payment of \$522,458.33. The settlement agreement nominates three potential recipients for this amount:

- (1) "Friends Outside," a nonprofit corporation whose mission is to assist families, prisoners, and ex-prisoners with the immediate and long-term effects of incarceration. The MCI payment would fund a program to provide low and very low-income family members with transportation and lodging costs to allow familial visits to prisoners. Family members are defined as those persons who have or are caring for the minor child of an inmate.
- (2) Future users of the inmate telephone system. The amount would be distributed by implementing a small reduction in the per minute charge all persons pay who receive collect calls from inmates until the entire amount is disbursed.
- (3) General Fund of the State of California.

The parties have not recommended any one of these three alternatives but rather have left the selection to this Commission.

The parties also state that it is economically infeasible to determine the exact amount of the inaccurate charges due each customer for the relevant time period without reviewing hundreds of thousands of billing records and the

² For good cause shown, the parties' request to file the unredacted version under seal is granted. The unredacted version shall remain under seal for two years. Any party may seek an extension of this protection should the facts so require.

performance of costly and protracted customer specific financial calculations. In the settlement agreement, the parties have developed a methodology for calculating a reasonable estimate of the amount MCI improperly obtained. The parties also state that many potential recipients of refunds cannot be located due to changes of address.

Article 2.5 of the Commission's Rules of Practice and Procedure

No hearing is necessary. Therefore, pursuant to Rule 6.6 of the Commission's Rules of Practice and Procedure, Article 2.5 shall cease to apply to this proceeding. Ex parte rules, however, found in Rule 7(e) shall continue to apply.

Discussion

Commission Rule of Practice and Procedure 51(e) requires that settlement agreements be (1) reasonable in light of the whole record, (2) consistent with the law, and (3) in the public interest to be approved by the Commission.

a. Reasonable in Light of the Whole Record

The parties agree that the billing errors alleged by UCAN have been corrected. The parties state that for the reasons set out in Section 7 of the settlement agreement,³ providing restitution to the exact victims is not economically feasible.

³ The parties offered the following reasons supporting their contention of economic infeasibility: (1) Most of the customers who were charged inappropriate rates are not presubscribed MCI customers and therefore are only billed by MCI when the customer accepts a MCI Maximum Security call, (2) many of the inmates placing the collect calls have been released, denied such privileges, or transferred, (3) many customers that received the collect calls have changed telephone service and cannot be reached, and (4) determining the exact amount of the inaccurate charges due each customer would

Footnote continued on next page

We consider it of paramount importance to discharging our duty to protect the public that every opportunity at our disposal be used to ensure full recovery of all funds wrongfully obtained. We expect any entity that obtains funds in violation of the Public Utilities Code or our regulations to promptly and completely return all such funds to customers. Here, the settlement agreement shows it is economically infeasible for MCI to calculate the amount due to the customers, and for MCI to identify and contact the customers.⁴ To address this inadequacy, the settlement agreement provides for MCI to pay \$522,458.33 to one of three substitute recipients.

We will accept the parties' representations on these facts, but we remind the parties and all other entities subject to our jurisdiction that accurate reparations to actual victims is the expected course of conduct. We will only allow deviations from this course of conduct where there is an insurmountable practical or logistical obstacle to providing refunds to the victims or, in extreme cases, where compelling evidence shows that compliance would require patently unreasonable expenditures of resources. The parties' methodology results in a reasonable estimate of the amount MCI improperly obtained, and pursuant to the terms of the agreement, MCI will turn over this amount to one of three potential recipients. MCI, thus, will retain no benefit of its erroneous billing. This outcome is reasonable in light of the whole record.

require review of hundreds of thousands of billing records and the performance of costly and protracted customer specific financial calculations.

⁴ We are also well aware of the difficulties in locating recipients of refunds. See, Communications Telesystems International, D.99-06-005.

b. Consistent with the Law

Public Utilities Code Section 734 requires that reparations be made to the person that paid the unauthorized charge. Here, however, we are unable to comply with the letter of that statutory directive. In Ortega v. AT&T Communications, 1998 Cal. PUC LEXIS 673, (D.98-10-023), we were faced with a similar dilemma. AT&T had overcharged coin users of pay telephones. Such users are anonymous, and thus refunds to the actual customers were impossible. We determined that where refunds to past customers were impracticable, the simplest refund mechanism would be to reduce charges for current services. (1998 Cal. PUC LEXIS 673, * 16.) We find that this rationale presents a fair and efficient resolution of the issue. There is likely to be a substantial overlap between current users of the MCI service and those previously overcharged. Thus, temporarily reducing charges for current service is consistent with the intent of the statute. Accordingly, we will select option two, reduced rates for current customers, from the three options presented by the parties. MCI shall file an advice letter setting forth tariff revisions necessary to reduce its revenue from intrastate Maximum Security Collect calls by \$522,458.33.

The settlement is therefore consistent with the law.

c. In the Public Interest

This agreement will avoid substantial litigation costs imposed on both the parties and the Commission. It will also obtain lower rates for current users of the prison telephone system. These factors and the other factors cited above support our finding that the settlement is in the public interest.

For these reasons, the Commission finds that the settlement agreement is reasonable in light of the whole record, is consistent with the law, and is in the

public interest. The agreement is approved pursuant to Rules 51 through 51.10 of the Commission's Rules of Practice and Procedure.

Effect of Settlement Agreement on Other Potential Complainants

The settlement agreement approved herein applies only to the parties to the agreement.⁵ Other persons who have filed or may file formal or informal complaints with this Commission, or sought relief in other forums, are not affected by this agreement. This settlement agreement does not preclude any MCI customer from obtaining a refund.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. No comments were filed.

Findings of Fact

1. The parties stated that it was economically infeasible to determine the exact amount of the inaccurate charges due each customer for the relevant time period without reviewing hundreds of thousands of billing records and the performance of costly and protracted customer specific financial calculations.
2. The parties also stated that many potential recipients of refunds cannot be located due to changes of address.
3. Accurate reparations to actual victims is not feasible.
4. In the settlement agreement, the parties have developed a methodology for calculating a reasonable estimate of the amount MCI improperly obtained.

⁵ At the request of the parties, language suggesting the contrary has been stricken from Section H.1. of the settlement agreement.

5. The settlement agreement that is Attachment A to this decision, incorporating our selection of the option two reimbursement mechanism, is the best available means of obtaining reparations for customers affected by MCI's billing errors.

6. The settlement agreement resolves all remaining issues in this proceeding.

Conclusions of Law

1. Public Utilities Code Section 734 requires that reparations be made to the person that paid the unauthorized charge.

2. The Commission's equitable authority allows for distribution of reparations to current customers where distribution to the past customers is not feasible.

3. The settlement agreement, incorporating the option two disbursement method, is reasonable in light of the whole record, is consistent with the law, and is in the public interest.

4. The settlement agreement, incorporating the option two disbursement method, should be approved.

5. In order to assure prompt compliance with the terms of the settlement agreement, and to quickly obtain the benefits of the settlement agreement for California consumers, this order should be made effective immediately.

6. The motion requesting that the unredacted version of the settlement agreement be held under seal should be granted.

O R D E R

IT IS ORDERED that:

1. The settlement agreement affixed hereto as Attachment A, using the option two disbursement method, is approved, and the parties are directed to comply

with the terms set forth in the settlement agreement including the option two disbursement method.

2. The unredacted version of the settlement agreement between MCI Telecommunications Corporation (MCI), The Utility Consumers' Action Network, and the Office of Ratepayer Advocates shall remain under seal for a period of two years from the date of this decision, and during that period shall not be made accessible or disclosed to anyone other than Commission staff except on the further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge. If any party believe that further protection of this information is needed after two years, that party may file a motion stating the justification for further withholding the letters and declaration from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than 30 days before the expiration of this protective order.

3. No later than 45 days after the effective date of this order, MCI shall file and serve an advice letter, along with supporting workpapers, which makes all tariff changes necessary to reduce MCI's revenue from intrastate Maximum Security Collect calls by \$522,458.33.

4. This proceeding is closed.

This order is effective today.

Dated May 3, 2001, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners

(SEE FORMAL FILES FOR ATTACHMENT A.)